

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 6, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Barbara Hopkins, Linda Hunter, Patte Newman, Tommy Taylor and Greg Schwinn; (Russ Bayer, Steve Duvall, Gerry Krieser and Cecil Steward absent. Ray Hill, Mike DeKalb, Steve Henrichsen, Jennifer Dam, Nicole Fleck-Tooze, Rick Houck, Mike Brienzo, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held September 22, 1999. Motion to approve made by Hunter, seconded by Newman. Motion to approve carried 5-0: Hopkins, Hunter, Newman, Taylor and Schwinn voting 'yes'; Bayer, Duvall, Krieser and Steward absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Hopkins, Hunter, Newman, Taylor and Schwinn; Bayer, Duvall, Krieser and Steward absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3134A, AMENDMENT TO WILLOW SPRINGS P.U.D.; SPECIAL PERMIT NO. 277F; PRELIMINARY PLAT NO. 99015, TIMBER VALLEY; FINAL PLAT NO. 98033, CHRISTENSEN COURT; FINAL PLAT NO. 99023, NORTH CREEK ORIGINAL ADDITION; FINAL PLAT NO. 99028, NORTH CREEK 1<sup>ST</sup> ADDITION; WAIVER OF DESIGN STANDARDS NO. 99010; STREET AND ALLEY VACATION NO. 99009; and STREET AND ALLEY VACATION NO. 99010.**

**Item No. 1.3, Preliminary Plat No. 99015; Item No. 1.8, Street and Alley Vacation No. 99009; and Item No. 1.9, Street and Alley Vacation No. 99010** were removed from the consent agenda and scheduled for separate public hearing.

Schwinn moved to approve the remaining Consent Agenda, seconded by Hunter and carried 5-0: Hopkins, Hunter, Newman, Taylor and Schwinn voting 'yes'; Bayer, Duvall, Krieser and Steward absent

**PRELIMINARY PLAT NO. 99015**

**TIMBER VALLEY**

**ON PROPERTY GENERALLY LOCATED**

**AT S.W. 31<sup>ST</sup> STREET AND WEST A STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda and scheduled for separate public hearing at the request of the Planning staff.

Steve Henrichsen of Planning staff requested that this application be held over for continued public hearing in two weeks to allow proper publication of the waiver of low flow liner.

Schwinn moved to continue public hearing with administrative action on October 20, 1999, seconded by Newman and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

There was no further testimony.

**STREET & ALLEY VACATION NO. 99009**

**TO VACATE PORTIONS OF M, N AND SO. 8TH STREETS,**

**LOCATED BETWEEN M AND N STREETS ON THE WEST**

**SIDE OF SOUTH 8TH STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and conditional approval

This item was removed from the Consent Agenda and scheduled for separate public hearing at the request of the applicant.

Proponents

1. **Rex Schultze** appeared on behalf of the applicant. With regard to the condition for a fence, Mr. Schultze advised that the applicant has agreed with the Public Works Department to put in bollards rather than a fence along the east side of the property and a curb and bollard along the south property line along N Street in place of the fence.

Dennis Bartels of Public Works concurred that the Public Works Department is in agreement.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 6, 1999

Schwinn moved to approve the Planning staff recommendation to find the proposed street vacation to be in conformance with the Comprehensive Plan with conditional approval, including the agreement reached between the applicant and Public Works as to the fencing, seconded by Newman and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**STREET & ALLEY VACATION NO. 99010**  
**TO VACATE A PORTION OF THE NORTH-SOUTH**  
**ALLEY GENERALLY LOCATED AT**  
**NO. 49TH & ST. PAUL AVENUE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and conditional approval.

This item was removed from the Consent Agenda and scheduled for separate public hearing at the request of Commissioner Hunter.

There was no testimony on behalf of the applicant.

Hunter notes that the normal alley size is 20' and this will be down to 13'. She wanted to know how the retaining wall got approved to be put in to begin with. Dennis Bartels of Public Works concurred that the subdivision ordinance requires new alleys to be 20', but 90% of the alleys around town are 16' or less. There is a retaining wall and some structural things out in this alley that have been there for a long period of time. To accommodate

those structures, Public Works is recommending approval. There is a companion request to pave the alley once the vacation is approved. Apparently, the wall was built and no one knew it was there and it is now part of the alley. 16' is probably the predominant dimension but Bartels believes 13' that is left can be made to work.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 6, 1999

Taylor moved to approve the Planning staff recommendation to find the proposal to be in conformance with the Comprehensive Plan with conditional approval, seconded by Schwinn and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**CHANGE OF ZONE NO. HP67  
FOR LANDMARK DESIGNATION  
AT 616 NO. 16<sup>TH</sup> STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Approval.

Proponents

**1. Steve Henrichsen** of Planning staff showed slides of the Kappa Kappa Gamma Sorority House that was built in 1945, designed by two Lincoln architects who designed about six of the UNL Greek Houses. The purpose of this landmark designation is to further protect the building and assist in fund-raising efforts for the property in cooperation with the University of Nebraska Foundation. The Planning staff and the Historic Preservation Commission are recommending approval of this landmark designation.

There was no testimony in opposition.

Schwinn thought the whole area had a blanket historic designation. Henrichsen advised that the whole area is on the National Register of Historic Places under the Greek Row designation; however, for fund-raising purposes it also needs to be declared an individual landmark.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Newman moved to approve, seconded by Hunter and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**CHANGE OF ZONE NO. 3205**

**BENES PLACE FINAL PLANNED UNIT DEVELOPMENT  
ON PROPERTY GENERALLY LOCATED**

**AT S. 8TH STREET AND HILL STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval, with revision to Condition #2.2.

Proponents

**1. Brian Carstens** appeared on behalf of Brian and Mike Benes. This has been a long process with a lot of negotiations with Planning and Parks staff. Through the PUD process, they want to swap the residential along the eastern/southern boundary back up to the north and do the I-1 PUD with stricter controls as far as building uses, orientation of the buildings, parks and most importantly, elimination of a lot of the nasty uses that are allowed in I-1 by right. There will be a 35,000 sq. ft. building at the south end; parking with truck docks on the west end; they have removed the loading docks from the northern edge of the building at the request of a neighbor; they are not sure what they will be doing with the north end--the neighbors have expressed an interest in purchasing the property and the Parks Department has also expressed interest.

Carstens was in agreement with the staff recommendation and conditions of approval, including the revision to Condition #2.2.

Hunter inquired about access by the trucks if it is a warehousing facility. Carstens envisions the trucks coming from the west on 6<sup>th</sup> Street, which has a median break off of Van Dorn. There will be two accesses, but he does not envision them going through the residential area.

Carstens advised that the applicant sent out over 70 notices and did have a neighborhood meeting. Only four people showed up and they have received only a few calls.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, with the revision to Condition #2.2 as recommended by staff, seconded by Taylor and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**SPECIAL PERMIT NO. 1795**  
**FOR A WIRELESS COMMUNICATIONS TOWER**  
**ON PROPERTY GENERALLY LOCATED**  
**AT 923 NO. 23<sup>RD</sup> STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval.

Proponents

1. **Michael Healey** appeared on behalf of **Sprint PCS**, the applicant. He assured that their first priority when searching for a new site is to locate any existing tall structures that they can mount the antennae upon. However, this tower is proposed as a new 80' monopole structure at the Lincoln Lumber site at 923 No. 23<sup>rd</sup> Street. The original reason for choosing this location is the existence of a tall structure – a sand elevator that is approximately 70' tall. Sprint had originally intended to mount antenna to the top of this structure. Unfortunately, it was determined that, due to the age of that structure, it was not capable of withstanding the extra load of the antenna. The proposed new tower will be immediately adjacent to this existing elevator, which will screen the new tower and it will not be obtrusive. The property is zoned industrial and Sprint does try to stay within the industrial areas with these tower locations.

There was no testimony in opposition.

Hunter inquired as to a new report coming out for new guidelines regarding these towers. Jennifer Dam of Planning staff stated that the staff is currently working on some revisions to the zoning ordinance for cellular towers and a model telecommunications ordinance. All of the towers on today's agenda follow what would be recommended with those changes, i.e. locating on existing structures where possible; location in an industrial district, etc.

Dam also pointed out that in their letter, the applicant indicated they would provide screening to meet design standards. A landscape screen is needed on the north side of the Lincoln Lumber complex. She does not know whether this is possible. The applicant

has since submitted a letter requesting that the landscaping be waived, which will require the applicant to appeal that condition to the City Council. The existing elevator is not real visible from the south, west or east because of the apartment buildings and existing trees. She believes this provides the proper screening.

Dam further pointed out that this is the type of place where the staff has been encouraging the location of these tower sites. This is about as minimal of an impact as we can get with a new tower.

Hopkins asked for a timeline on the new ordinance. Dam stated that she is meeting with Law Dept. and the consultant tomorrow on some of the revisions. What is holding them up is working on criteria for evaluation and review. The staff wants the public/industry to be able to comment before it is brought forward to the Planning Commission. They hope to have something for the industry to review by early November and have it at Planning Commission by the end of this year.

#### Response by the Applicant

Healey believes there was a misunderstanding as to the landscape screening requirements. They were having problems complying around the immediate site within the lumber yard compound. The landscaping along the north side of the lumber yard is appropriate and they will comply. The tower is 80' with a lightning rod atop for a total height of 85'.

Hunter inquired about collocation—it seems like there is an aversion to sharing tower space. She has a vision of looking across Lincoln and seeing 60 towers and somewhere there is going to have to be some provision for sharing these towers so that we are getting maximum usage. The reality is that we are starting to pollute the landscape with these tall towers and she hopes Sprint is looking to work together to share with other companies. Healey responded, stating that they are doing so and it is easier when they can share. It is less expensive to share; it generally makes things go more quickly and smooth from a zoning and land use standpoint; and their first priority is to be able to collocate. Sprint welcomes any other carriers to locate on their towers. All towers are built to accommodate at least two and almost always three carriers.

Hopkins understands wireless services, and it is one thing to say you welcome others to collocate, but what do you do to promote it and what is your history on collocation? Healey stated that Sprint has generally been sort of the new game in town – it has generally been Sprint asking to utilize the other company towers. Sprint has not been the host as it is a new situation. There are several instances in other communities where Sprint has towers upon which AT&T will be locating; however, they have not had much of a chance to demonstrate because they have been the new game in town. He assured that as the new carriers come in, Sprint will make their towers available.

Hunter commented that she would like to see approval of these new towers based upon the absolute requirement to share the tower. Dam pointed out that on this particular tower, she did not add a condition that would require the tower to be constructed to accommodate collocation because of the existing structures in the lumber yard, but it could be added that the structure be built to accommodate collocation, if someone could locate lower than the proposed antenna. Healey would not disagree. This tower will be built for two carriers and there will be a port located approximately 10' below the top for collocation.

Dam suggested adding Condition #2.1.1.2 to, "Add a note to the site plan indicating that the tower will be constructed so as to accommodate at least one future additional carrier." Healey agreed, and confirmed that this would not require the tower to be taller or bigger.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Hunter moved to approve the Planning staff recommendation of conditional approval, with amendment adding Condition #2.1.1.2 as set forth above, seconded by Newman and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

Note: This is final action by the Planning Commission unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days following the action of the Planning Commission.

**SPECIAL PERMIT NO. 1796**  
**FOR A MONOPOLE TOWER**  
**ON PROPERTY GENERALLY LOCATED AT**  
**3200 N.W. 12<sup>TH</sup> STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval.

Jennifer Dam of Planning staff advised that the City Attorney has added Condition #2.3 requiring a variance from the Board of Zoning Appeals for additional height.

**Proponents**

**1. Mr. Scott of AT&T Wireless Service**, presented the application. They did attempt to seek collocation, but in this particular case they are unable to find a structure that can handle the weight of their equipment or is not structurally able to do it because of existing



carriers. Therefore, they had to seek this additional tower site. Thus, there will be two towers right beside each other. Scott stated that they tried very hard to mitigate that situation but were unable to do so.

Dam also suggested adding a Condition #2.1.1.3 that this tower be constructed to accommodate collocation.

Dam also clarified that this tower will be required to meet all requirements of the FAA and NAA. The Airport Authority was unable to evaluate it because of the elevation. There are other structures in this vicinity that are as tall or taller. They will need to make this determination before the request for a variance goes to the Board of Zoning Appeals.

There was no testimony in opposition.

Hopkins asked the staff to address this tower as it relates to the new ordinance being drafted. Dam stated that this particular tower is located in an industrial area—this is an area where we would encourage location because it would have minimum impact on the community as a whole. There are a lot of pole signs in the area; there is another existing tower; and it will not have as great an impact as if located in other areas.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, with amendments to seek a variance from the Board of Zoning Appeals and collocation, seconded by Hunter and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

Note: This is final action by the Planning Commission unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1797**

**AND**

**SPECIAL PERMIT NO. 1803**

**FOR TELECOMMUNICATIONS ANTENNA AND EQUIPMENT**

**ON PROPERTY GENERALLY LOCATED**

**AT 4300 INDUSTRIAL ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval.

Proponents

**1. George Scott of Divine Tower International** presented the application, stating that this is an excellent example of collocation and adaption of the antenna. You can hardly see the antenna on the water tower. This is the type of use we try to achieve.

Jennifer Dam of Planning staff concurred that this is the type of thing that the new ordinance will be proposing and the type of application that the Planning Department would like to approve administratively. Normally, we would have combined both applicants in one special permit, but they both submitted at a slightly different time and we didn't want to hold them back. Sprint PCS will be collocating on this particular tower, also.

**2. Mr. Healey of Sprint PCS** submitted a photograph of the proposed antenna, pointing out that it will be minimally visible.

Both of these antennae are collocating on an existing structure.

Taylor asked if there is a maximum number of antennae that would be needed in a city of our size. Dam explained that each company has a slightly different technology resulting in different needs for the number of sites required. It depends on the technology involved and the ultimate number of users.

Taylor inquired about the spacing between towers. Scott indicated that the radio frequency engineer determines a search rate (area of coverage) and it would not be desirable to have 10 towers within a small block area. It is designed to hand off a signal at a certain distance to keep seamless communications going. They are looking to use a minimum number of towers or search rings in a community. The distance between towers would depend on the structures in between. These are low power transmissions.

Healey added that there is not a hard and fast rule as to the distance between towers owned by one company and towers owned by other companies. There are a lot of different factors involved, including topography of the land, proximity to heavily populated areas or heavily traveled roads. So much of it is dictated by the consumer and the more consumers you have using the phone in a particular area, the more sites you need in that area. Healey does not believe there would be 10 towers in one block.

Hopkins wondered how close two towers might be in a great big city with bunches of users. Healey would estimate one mile, but there are so many different factors that can alter that.

Hunter commented that if we were going to completely cover Lincoln proper with service, then we could wind up having a tower every square mile for that coverage. Evon Joseph, the radio frequency engineer from Sprint, stated that it depends on the users and the area.

For example, downtown requires more sites than a rural area. A rural area has a lot less sites because the demand is not as great.

Hunter needs a sense of where this is heading long term. Based on Lincoln's population, Joseph does not foresee 10 sites within a square mile. Hunter wonders if there is a conflict between the towers of different users if they are too close to each other. Joseph indicated vertical separation of the antenna is 5' to 10'. Horizontal separation is a little bit different. You cannot have the towers poking into each other. This is based on the technology as well. The further away from each other, the less impact on the additional carrier. There is no exact number.

Taylor is just concerned about the number of towers.

There was no testimony in opposition.

Newman asked whether staff has any recommendation that only so many towers will be allowed within a certain geographic distance. Dam suggested that that gets more difficult and she does not know how successful that would be because of the telecommunications law that does not allow discrimination between companies. We are not allowed to create a situation that causes a barrier to entry for any of the companies. A spacing requirement might create a barrier to entry. Through the special permit process, the carrier could be required to explain why they cannot collocate, etc. Dam indicated that the staff will be creating design criteria to tell the good from the bad, etc. The staff has been working very closely with all the providers. This particular situation is what we call a camouflaged site.

Hunter commended the staff for their work on this particular application.

Public hearing was closed.

**SPECIAL PERMIT NO. 1797**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Taylor and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**Note:** This is final action by the Planning Commission unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1803**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Newman moved to approve the Planning staff recommendation of conditional approval, seconded by Taylor and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

Note: This is final action by the Planning Commission unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1805**

**FOR WIRELESS COMMUNICATION ANTENNA AND EQUIPMENT  
ON PROPERTY GENERALLY LOCATED AT  
2901 "A" STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Proponents

**1. Michael Healey of Sprint PCS** testified in support. He certainly does understand the concern about the future and not knowing the number of towers. It is for that reason that Sprint makes every effort to utilize existing structures whenever possible. They do ask their engineers and architects to find creative ways to make these things work. In this special permit, they are proposing to mount antennae to an existing smokestack at the Waterpark Condominium complex at 2901 A Street. When built, the antennae will be painted a blue color to match the smokestack and it will be very difficult to be seen. The equipment will be located within the existing building and will not be seen.

There was no testimony in opposition.

Jennifer Dam of Planning staff advised that there is another provider looking at locating on these smokestacks as well.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Taylor and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

Note: This is final action by the Planning Commission unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1801**  
**TO PERMIT THE SALE OF ALCOHOLIC**  
**BEVERAGES FOR CONSUMPTION OFF**  
**THE PREMISES, ON PROPERTY GENERALLY**  
**LOCATED AT SOUTH 27TH & RANDOLPH STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Denial.

Proponents

1. **Robert Frerichs**, 6459 Boxelder Drive, presented the application for off-sale beer at 2633 Randolph. He is the owner of the building where he is currently operating a tobacco store and check cashing facility. From a customer survey, he has determined that beer sales would be a welcome. There is not a outlet for beer on the west side of 27<sup>th</sup> from Y Street to Stockwell Street and Randolph is a walking neighborhood.

This permit is for the west bay of the 75 x 100 building, measuring 25 x 75 feet.

With regard to parking, there are actually 22 parking stalls, 2 being reserved for himself, one for each business and one for each apartment above. Four of the tenants do not own vehicles. 20% of the people in this neighborhood do not own cars.

Frerichs noted that the staff report states that the first house immediately to the west has been removed and is now a parking lot with a 7' fence running the entire west side of the lot, owned by Paramount. By Frerichs' measurement from property line to property line, there is 105' and it is 112' to the actual location of the liquor license. The property owner next door is not opposed to this application.

As to mitigating circumstances to the apartments, Frerichs pointed out that all of the apartments have separate entrances from the rear and there is no direct line of vision from the apartments to the license area. Signage is minimum and located on the street side only. There is a 7' high storage facility that is between the apartments and the licensed area. There is a rear door that is accessible from the parking lot. Access to the parking is from 27<sup>th</sup> Street. Frerichs stated that he would encourage customers to use the appropriate parking; however, a large share of his current clientele walk to his business.

Frerichs understands the concern about the park. He picks up trash every morning in the city parking lot. The temptation will always be there to do what is inappropriate, but it is the minority that causes the problem.

Frerichs has plans for warm beer sales only; he does not have a cooler. The hours of operation are from 10 a.m. to 8 p.m., six days a week. He has complete audio/video surveillance 24 hours a day and the front door states that customers must be 18 to enter. His intent is to operate a separate and distinct business.

Frerichs believes there is always opposition and he is aware of some opposition to this permit, but at the same time he has letters and petitions from the tenants of a property owner that have no opposition. He gathered 300 signatures in support.

### Opposition

**1. Dick Patterson, President of Woods Park Neighborhood Association, and as a representative for Lincoln Public Schools and Labor Ready**, testified in opposition because, generally speaking, this is just too near to Lincoln High School and the new Arts Focus. Mr. Patterson does his share of picking up trash in the neighborhood. The temptation for littering the park is impelling enough, but this is just not a good location. The businesses in that block attract lots of young people all day long, which is not a good place to be selling beer. Patterson has contacted the management of Labor Ready, which is now in the neighborhood, previously located at 13<sup>th</sup> & F, and they had a great deal of problem there because there was beer available across the street. The management of Labor Ready is emphatically opposed to this permit because they have been more successful without the access to beer for their laborers. It is too near to school; too many kids in the neighborhood; and Labor Ready is not a good place to have beer.

**2. Mike Morosin**, past President of Malone Neighborhood Assn., testified in opposition. A number of the residents have children attending Lincoln High. He also deals with this problem as a board member at Daywatch with alcohol stores just a few blocks away. It is a problem at Trago Park. We do not need to have another alcohol store that close to a park.

It was clarified that Ideal Grocery does not sell alcohol.

Hopkins inquired as to the distance required between a liquor license and an education institution or school location. Rick Houck of Planning staff believes it to be 150'. The Focus program is at least 300' away. Houck confirmed that there are three houses to the west, so there is additional parking between the liquor sales and the residences to the west; however, that would not change the staff recommendation because of the residences on the second floor of the building. Houck reported that he has received calls from at least three different land owners within the area and has received a letter from the people on southeast corner of 27<sup>th</sup> & Randolph, who are in opposition.

Houck advised that there is no history of a pre-existing license at this location. If indeed Frerichs did have a license, it probably lapsed and he has to start over with the special permit.

Response by the Applicant

Frerichs believes there is always going to be opposition. It comes down to what kind of business he has and what kind of an operation he runs. He assured that he has 25 years of experience in management and has never had a complaint yet. He had a license from the Liquor Commission in 1994 and held it for 2 ½ years. He had a license at 2637 Randolph.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 6, 1999

Newman moved to deny, seconded by Schwinn and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99009  
TO REVIEW THE FY 2000 AND 2001-2005 LANCASTER  
COUNTY ROAD AND BRIDGE CONSTRUCTION PROGRAM.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Duvall, Krieser, Steward and Bayer absent.

Proponents

**1. Mike Brienzo of Planning staff** presented the application, advising that each year the County Engineer puts together a one and six-year road and bridge construction program and requests the Planning Commission to review the proposal as to conformance with the Comprehensive Plan. The staff finds this program to be in general conformance.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 6, 1999

Schwinn moved to approve a finding of conformance with the Comprehensive Plan, seconded by Newman and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**WAIVER OF DESIGN STANDARDS NO. 99012  
TO WAIVE SIDEWALKS, STREET TREES AND  
THE DEPTH TO WIDTH RATIO  
ON PROPERTY GENERALLY LOCATED  
AT NORTH 70TH STREET AND CORNHUSKER HWY.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Approval of the sidewalk waiver; approval of the waiver of the depth to width ratio; and denial of the waiver of street trees.

Proponents

**1. Mike Johnson of Olsson Associates** appeared on behalf of the owners of the property expressing appreciation to Planning and Public Works for their recommendation to waive the sidewalks and the width to depth ratio; however, his client is still requesting the waiver of the street tree requirement. There are street trees along Cornhusker Highway and with these lots; however, this will be the fourth replat of that area and all that has happened is the rearrangement of lot lines. In the previous plats there were escrow amounts for street trees along Cornhusker Hwy and North 70<sup>th</sup>. His clients planted the trees and Parks & Recreation inspected and recommended release of the bonds for those trees. His clients have spent a lot of time and money around their immediate sites next to the building screening the buildings and parking lots. It came as a shock when they saw the escrow amount of more than \$100,000 for more street trees on an area that was previously platted. They are just moving the lot lines around and they have accommodated the street tree requests in the past.

There are staked young trees along Cornhusker, planted approximately every 175'. Hopkins believes the main concern in the staff report is the street trees on North 70<sup>th</sup> Street. Rick Houck of Planning staff agreed that it is North 70<sup>th</sup> Street that is a problem. There are trees along the Cornhusker frontage; however, they may not totally meet the Parks requirements out along the street itself, but Houck agreed that the developer has gone above and beyond as far as trying to hide his parking and the building. There is a minimum amount of street trees out along 70<sup>th</sup> Street according to previous plats, but maybe not sufficient according to today's requirements.

Hopkins confirmed that the trees are there--they are just not as close to the street. Johnson concurred, and the developer has been in for three previous plats and done everything that the city has asked for. The use of the property has not changed nor the zoning. They have merely moved the lot lines around. Johnson suggests that the \$100,000 bonding requirement is excessive. This developer is not against planting trees and not against the Parks Department by any means. \$100,000 is just a lot to swallow just



to move lot lines around. Houck believes the bond amount is more like \$10,000. Parks probably did not get out on the site and did not have the opportunity to inspect. They do not get out to view every single plat during their busy time of the year. Considering that \$100,000 was the amount given to the applicant and considering what has been planted, Hopkins wants to know what happens next. Houck suggested that a waiver may not be necessary if Parks can get out there and finds that there are sufficient trees to meet the requirements.

Johnson stated that he had made a formal request to Parks to take into consideration the existing trees and landscaping when he requested these waivers. Houck's response again was that this is a subdivision--according to the subdivision requirements, it does not matter whether they are moving a lot 500' or 1'. The subdivision ordinance specifically requires street trees and all the other necessary requirements. Parks and Recreation needs to determine whether the street trees are there. Houck suggested the Commission defer action for two weeks to allow the Parks Department to make an inspection. Johnson knows his client is in the process of refinancing one of the lots and that is part of the reason for the subdivision. He is attempting to do separate financing for the four different sites. They are already under a time constraint. Houck then suggested that the Planning Commission could support the staff recommendation and he could get Parks to inspect between now and hearing before the City Council. If there are street trees in place, the bonding amount could be waived before it is acted upon by Council.

Hopkins wants Parks and Recreation to inspect before this goes to the City Council.

With regard to the sidewalk waiver, a week ago the City Council indicated that when there are waivers of sidewalks, they will want a formal agreement from the subdivider that will be filed with the final plat that they do not object to the creation of an assessment district. Johnson agreed that it was previously discussed that the city can ask for them to agree but he does not believe they can force the owner or subdivider to sign such an agreement to not object. Rick Peo, Chief Assistant City Attorney, clarified that previously it was determined that such a condition was not needed because the City Council can order sidewalk construction at anytime without petition. Now it has been determined that they cannot object and the City must ask for a formal written agreement as one of the conditions of approval so that it is filed of record and an understanding to the property owners.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Newman moved to approve the Planning staff recommendation of conditional approval, with the understanding that the Parks Department will inspect and address the street tree situation before action is taken by the City Council, seconded by Schwinn and carried 5-0:

Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**COMPREHENSIVE PLAN CONFORMITY NO. 97002;**  
**CHANGE OF ZONE NO. 3198;**  
**SPECIAL PERMIT NO. 1786,**  
**BLACK FOREST ESTATES COMMUNITY UNIT PLAN; and**  
**PRELIMINARY PLAT NO. 99020,**  
**BLACK FOREST ESTATES,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 62ND STREET & OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Schwinn, Taylor, Hunter and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan on Comprehensive Plan Conformity No. 97002; denial of Change of Zone 3198; conditional approval of the community unit plan and preliminary plat.

Ray Hill of Planning staff submitted a memorandum from the Parks Department stating that they have no plans or desire to accept this area for another neighborhood park because there is already a park in the neighborhood and they don't feel there is a need for any additional because Colonial Hills Park serves the needs of the entire square mile of development.

Hill also submitted one letter in support of the street connection between Tanglewood and Old Cheney Road; one letter in support of the declaration of surplus and conversion to park; three letters in opposition to the street connection; and one letter asking that the change of zone be denied.

Proponents

**1. Rob Otte**, 201 No. 8<sup>th</sup>, Suite 300, presented the application on behalf of the applicant. This is a plan to be a blend of "new urbanism".

**2. Jim Hille, Sinclair, Hille & Associates**, displayed a drawing to provide a better graphic representation of the intent of this development. It is not a standard subdivision. This drawing was presented to a gathering of the Colonial Hills Neighborhood Association, and since then it has undergone some minor changes. This tract of land is marked with some very strong natural features. Moving along Old Cheney, it is generally a wooded area on its edge with a duck pond at the entrance of two existing residences. Collectively, this tract currently has a pond and a great dense growth of trees. The land has a major change in topography with draws through it. The intent of this subdivision is to try to work

with the natural features. A "new urbanism" neighborhood is attempted to be created, characterized by narrower lots, deed restrictions relative to the garages being pushed back; reduced front yards; deed restrictions relative to design; and alleyways to access to the back side of garages. This is truly intended to overlay the concept of "new urbanism" onto this site with natural trees and vegetation. This means that the subdivision is intended to try to avoid a hierarchy of streets so that it has a neighborhood feel, stressing the ability for people to walk the streets along with a combination of trails connecting to ponds. A second pond would be incorporated which would be a part of the detention cell.

Hille went on to state that connectivity is an important part of "new urbanism" and for that reason this development connects to the commercial development to the west and connects to the east to both the existing and proposed subdivisions. There is no connection shown to the north. At its very heart, the reason it does not connect to the north is for "new urbanism" to work without collector streets bisecting. There are two areas shown as outlots and this developer intends for those to be townhouses that would be multi-level; however, these are not yet designed. It is difficult in platting to lay out specific density without having a design. That is why this developer is asking to show these as outlots and to work within the density that is allowed.

Otte reiterated that there are some significant features on this property, but the only real issue is the roadway connection to the north. One of the items was for the outlot to be declared surplus public property. The applicant does not mind taking ownership of that property. Otte stated that he has talked with the Parks Director and he wants to get involved with the details after the decision as to whether it becomes a roadway or a park. The applicant does not care whether they own it, but they will acknowledge to be responsible for maintaining that park by the homeowners association.

Otte informed the Commission that they had a neighborhood meeting on March 11<sup>th</sup>. 1400 letters were sent out to the Colonial Hills area. This plan was presented and they received a resounding vote that, all things being equal, this was the plan with which to proceed. But, the street issue keeps coming back. Either side of this question can bring in bodies to say one thing or the other. Otte suggested that this is a quality development in a quality piece of property and dragging a street through this connection affects that quality. We cannot accomplish this with the hierarchy of streets where we would make that connection. Otte submits that a hiker/biker path is a connection. Neighborhoods can connect with things other than vehicles. They do not want to create an island. They are proposing to connect over to Edgewood. That is a connection that is not now shown anywhere. They are trying to connect to Pheasant Run and trying to provide access to Edgewood without having to get on 56<sup>th</sup> Street.

Otte stated that this developer recognizes that this has been a problem that Colonial Hills has had for a long time, but they do not think they should be saddled with the responsibility of solving that problem. This developer is trying to open up the community to bikers. It is not an attempt to create a win/loss. They just can't solve all of these problems. If this

connection is a vehicular connection, it does not serve Black Forest Estates. If that connection is made, then the city should be responsible for helping pay because this developer would be helping to solve a problem outside of this plat. He agrees that there is a problem, but there are other remedies that the city could consider. There are too many cars going down Elkcrest; however, that does not mean you force those cars to go a different direction to the detriment of another neighborhood. If indeed a vehicle connection is made here, Otte would suggest that it changes the character of this property. When you create "new urbanism" in a site like this, if you do something to bifurcate that property or change it, it probably changes the character of the property. We don't want the edge to Edgewood to go any further. This is the right project to do at this time.

Otte then submitted proposed amendments to the conditions of approval. When this project was started, they did not know what the densities were going to be. There are a couple of areas that are being left vacant for "fun" things, whether it be townhomes, single family and townhomes, etc. They have decided that they will probably have enough density if they can use R-2. There would be no apartments. The applicant would accept a change of zone from R-1 to R-2 instead of R-3.

Under both the community unit plan and plat, Otte requested that:

--Condition #1.1.1 to show a roadway connection to Tanglewood Lane be deleted.

--Condition #1.1.2 be revised to read: "Outlots A, C and I labeled as future building lots and revise note #11 accordingly."

--Condition #1.1.3 be revised to delete the requirement to include the number of dwelling units on Outlots A, C and I. Otte agreed that they could show how many units would be possible, but they will put in whatever they believe will fit reasonably. It will not be single family use.

--Condition #1.1.7 be deleted. This condition requires that no final plat shall be approved until the plans for the Edgewood Shopping Center and the Pheasant Run CUP have been revised and approved showing the proposed roadway connections. Otte submitted that the city standards already provide that you can only build so many lots without having a couple different connections. The issue is that the Pheasant Run people will not grant permission to access until they know the upper roadway connection into Colonial Hills has gone away. This developer wants to be able to final plat now for the first phase of 14 lots without having to rely on agreements being in place for the connections.

--Condition #1.1.12 be added as follows: "The grading and drainage shall be revised as requested by Public Works." The city is presently planning to widen Old Cheney. The grading plan shows preservation of as many trees as possible. If they grade this roadway to the proposed roadway that is not in final design, they will end up

taking out rows and rows of trees. Otte suggested that at the time the city wants to build the roadway, let them come build it. Maybe the grade can be changed to keep some of those trees. They do not want to remove those trees at this time.

--In addition, the applicant is requesting a condition to change the street name from Pheasant Run Lane to another name to be proposed by the applicant and approved by the Planning staff.

--The applicant will also be requesting that the requirement for street lighting be met by adequate yard lighting, but this would have to be a separate waiver request and need not be considered at this time.

--And finally, the applicant is requesting that this application be allowed to be scheduled on the City Council agenda prior to submitting the revised documents and plans.

Otte believes that the requests for changes are reasonable. This road issue will be an issue that also gets debated at the City Council level. He is hoping the Commission can come to some consensus today so that this project can be moved forward.

Newman understands from some correspondence that Mr. Otte was present at a meeting in 1988 and knew this lot was to be used for an access road for Colonial Hills. She asked whether it was possible that by shifting a couple lots over to the other side that access road would not be needed? Otte responded, stating that he has worked in this area for almost 20 years. The issue was whether there were other access points, and there are not. There had been, but the City Council, developers and neighbors had allowed all of those to close. This became the last lot that the city could acquire, and Quin-C allowed the city to take title under threat of condemnation and agreed reluctantly to do that. The circumstances have changed since that time as well.

Hopkins suggested that it's also a matter of which access you want and for which purpose.

**3. Tom Miller**, 6501 Pheasant Run Place, which is immediately to the east, testified in support as the President of the Pheasant Run Association. The Pheasant Run Association is absolutely adamantly opposed to the street connection because of the increase in the traffic, and they believe that the Black Forest Estates, as presented by the applicant, makes a much better addition.

**4. Jim Luers**, resident of Parnam Place, 6021 Rosebud Circle, immediately north of a portion of the proposal, testified in support. He has been fighting the Edgewood development for years. He is in a strange situation here because he is actually speaking in support of a development. He is concerned about the change of zone, but in this instance maybe R-1 or R-2 is better than commercial. This area has always been piece-meal development--one thing at a time. He now sees a project which finally talks about a

major chunk of ground that will resolve the final development along Colonial Hills. He urged that we all think about the big picture as opposed to this small road. Parnam Place probably has more distance to travel to get out of Colonial Hills. Most of the arguments for the road are going to be for convenience or to lessen the traffic going in front of their houses. There are a dozen exits out of Colonial Hills and the most they have to travel is 5-7 blocks. Luers suggested that if this project means a final resolution of an area that is not piece-meal and a good resolution to the Colonial Hills neighborhood and the residential area with a first class single family neighborhood, let's get past the road issue. If this road will jeopardize the project, let's get past that.

Hunter requested some background on the mind-set for people buying in Colonial Hills. It seems like the trend was to create a closed environment for slower traffic and local traffic. The proposal for this street makes her think they had that mind set to begin with and now they want another outlet. Wasn't the intent of the development to create a little community in itself? Luers responded, stating that he has been there for about 15 years, so it was before his time. There are no quick thoroughfares to get through there. By putting in another access road it will not remedy all the problems.

**5. Steve Worster**, a neighbor of Jim Luers, testified in support. He does not have a problem getting out of the area. He is profoundly against the access road. This is a good quality development that will enhance the neighborhood.

### Opposition

**1. Beth Morgan**, 5601 Elkcrest Drive, testified in opposition. She submitted a visual concept of Colonial Hills as it exists, showing the streets coming into the neighborhood. Elkcrest, 61<sup>st</sup> and LaSalle are the heavier collector areas. Hickory Crest and Ridgeview are two recently added accesses. Her map also showed the traffic flow. Ms. Morgan became involved in this issue 10 years ago. She started looking at the traffic and safety concerns. She went to the City and talked about other access roads. There were more exit and entrance roads planned in the beginning. A lot of those were blocked by neighbors and developers over time--one by one. By the time she became involved, there were only 5 choices left and the one they are arguing for was by Brushwood Lane where there is a stub street and barricade which they tried to get to run into Pheasant Run. There are 25 homes in Pheasant Run with more outlets. She knew there would be traffic on her street, but that does not eliminate the fact that a neighborhood of this size should have more access and entrance. Ms. Morgan informed the Commission that there is a broad base support for the street connection in this neighborhood. It is important because this is the very last chance they have to get an exit. Good planning for city guidelines would say that there should be more outlets for this neighborhood. This would not be a major collector street. Tanglewood Lane is already a traffic area and she does not know how

much that traffic would increase. The City Council mandated the city to purchase the lots so that the street could be connected. The City Council was clear that they could not obligate a future City Council, but they also told us to be sure that future City Council is made aware of how strongly they felt about it.

Hunter asked whether Ms. Morgan thought that there is any chance that the original intent of that road might have changed in the last year. Linda Wilson, former City Council member, has commented that she was adamant about that road; however, in the face of changes over the next 10 years, she does not see the need any further. There has been a lot of change in that neighborhood in the meantime. Ms. Morgan believes the dominant changes have been in the southern area of Colonial Hills. The development has been closer to Old Cheney. Another change that has occurred is that there are a lot more drivers just because families have aged in that area. She thinks there might be more of a need now than in the past. She thought Linda Wilson was still going to support her position.

**2. Terry King**, 4901 No. 71<sup>st</sup>, co-developer of Hickory Crest 1<sup>st</sup> Addition with Quin-C, Inc., which is the area from Old Cheney north on Hickory Crest to Berrywood Lane, testified in opposition. Hickory Crest Circle and Kings Court were part of this co-development and they got along very well, but at that time, they were required to make the connection to Berrywood Court. At that time (1992), they were assured that there would eventually be another connection out of Colonial Hills to Old Cheney (this came from Planning staff and Traffic Engineering) and it was understood by Dr. Carveth and Rob Otte that that second connection would be provided. King submits that there has been a continuity of the knowledge that that requirement was there, and they were assured that the city would require that this second access be put in and required as a part of the platting of the rest of this property. Hickory Crest is a connecting street to Colonial Hills, not a collector. It is not a significant enough detriment to create the need for the area to be rezoned.

**3. Richard Ludwig**, 6611 Tanglewood Lane, testified in opposition. There has been a lot of “selling” going on today. We all have to maintain our responsibility to the community—not just to individual developers or individual residents, but the community at large. We have 1400 homes in Colonial Hills and 25 homes in the private community in Pheasant Run that is not hooked up with anything other than a private drive. If in fact they were going to hook up to Pheasant Run, they would have brought it forward in writing. He does not believe Pheasant Run would ever allow a hook-up. They have never been part of the Colonial Hills Association. Anytime Pheasant Run has been asked to participate, they have been adamant that they are not part of Colonial Hills.

With respect to the neighborhood park, Ludwig suggests that the reason Parks does not want it is because there is a beautiful park that exists serving that entire square mile. It would be a shame to deny access to that park to the people in Black Forest Estates. If more people rode bicycles down Elkcrest, we would not be here, but they don’t, and emergency vehicles need that extra access.

Ludwig is also concerned about the waiver of sidewalks. All through Colonial Hills there are sidewalks. This will hook up to an area that has no sidewalks. "New urbanism" does not mean no sidewalks and no access to the surrounding community. Ludwig believes that the advice of the professional city traffic engineers is very important here. Traffic engineering is a science. All scientific data is in place to indicate that that access needs to be there. Ludwig pointed out that during the debate for Hampton Inn, they did not want to see access connecting Tanglewood Lane to Old Cheney being held hostage by that development. There has not been a great deal of consideration for the community at large. We need to listen to the professionals hired and paid by the city to collect data to indicate where the streets need to be located.

Ludwig contends that if we don't put the connection in now, it will never occur.

With regard to the applicant's request to revise the condition regarding the grading along Old Cheney Road, Dennis Bartels of Public Works advised that Old Cheney Road is under design right now, scheduled to be built next year. Bartels wanted the grading plan on this plat to acknowledge what is going on now, along with the city's functional plan prepared by Olsson Associates that showed limits of grading, etc. In Bartels' opinion, the plat that was prepared and the traffic plans prepared for the functional plan are in conflict. Beyond those technicalities, Bartels offered that this would be a good opportunity for Mr. Otte's engineer to work with the city design people to get the street project built that was approved by the City Council. This applicant and the city need to work together on the grading for Old Cheney Road. Bartels disagrees with the request to amend Condition #1.1.12. He wants the opportunity to force the cooperation to make it work.

Bartels also stated that he is emphatic in recommending the street connection. This has been a requirement over the last 20 years and he believes the staff was given clear direction when the city bought the outlot to provide this street connection and to continue to ask for it. There have been no other directions given by the City Council. The volume of traffic, especially at 56<sup>th</sup> and Elkcrest, is one of the major concerns. The other concern is the high speed of the traffic that may be coming from the east end of Colonial Hills. Because of the lack of accesses, if you are forced to travel more than 1/4 mile to get to your destination you will tend to be driving faster. The city did do some traffic counts and also did a couple of recent counts in the last few weeks. The 24-hour counts at 56<sup>th</sup> and Elkcrest show about 3500-3600 cars per day using that particular intersection. The Hickory Crest intersection, the only other through street from Colonial Hills to Old Cheney Road, showed approximately 1200 cars per day using that intersection. The first intersection of 70<sup>th</sup> north of Old Cheney Road is Antler Drive, and it showed about 1400 cars per day.

The staff tried to do a quick and dirty study of the effect of another street out to Old Cheney Road by looking at the number of lots and taking an educated guess as to direction. That study assumed 220 lots with the assumption that the greatest reduction to trips by making this connection would probably occur at the 56<sup>th</sup> & Elkcrest intersection, resulting in a 20-25% reduction. It would also reduce by 10-15% the number of cars that might use Hickory



Crest Road. The assumption was that there would probably not be a whole lot of change one way or the other at Antler Drive with this connection.

Bartels also pointed out that the City has no way to require the connection to Pheasant Run.

Bartels estimated that there could be as much as 2,000 trips generated per day on the Tanglewood connection upon full development.

Hopkins wonders if we're not trading one problem for another, i.e. making more of a problem on Old Cheney. Do I want more of a problem at Elkcrest, which already exists, or do I want to add and have more of a problem at Old Cheney? Bartels suggested that Hopkins is thinking that there is only one connection to Old Cheney and that is what the developer has proposed. Part of the problem is the city's desires and what the city is left to work with by previous approvals.

Taylor asked which would be the preferred street for increased traffic--Elkcrest or Old Cheney? Bartels believes that part of the problem here, depending on where you live in Colonial Hills, is that you force people to go to 56<sup>th</sup> Street and make a circle and come back and go through several signalized intersections. From a transportation point of view, you want a person to make the fewest turns to get to an arterial street. Hunter assumes they would probably avoid 56<sup>th</sup> Street altogether and take the exit out of Hickory Crest Road. Bartels suggested that it gets to be a function of distance. Historically, the city wants streets every quarter mile.

Hunter asked for the density calculations upon full development. Ray Hill of Planning staff advised that the existing R-1 zoning, under the CUP, would allow 150 dwelling units. If it goes to R-3, they could have 270 dwelling units. Bartels interjected that there is only one exit for sure that is ever going to happen for 150 units. Hunter thought there was a proposed connection between Pheasant Run and this new development. Bartels acknowledged that it is shown, but it cannot be guaranteed by this development and the city has no way to force it to happen.

Schwinn noted that Robin Court, Rainbow Circle, and Rosebud Circle all terminated because Colonial Hills did not want to get into Edgewood. Hill did not necessarily agree. At the very beginning of Colonial Hills, there was a proposal for access to the south and at that time the owners prevailed in not being required to put in that access. Upon further Colonial Hills development, and as Pheasant Run came in, the city again asked for the connection and the neighbors in Colonial Hills objected. As Pheasant Run was developed, there were connections required to the east, and over a period of time when parts of Colonial Hills was developed to the east, Pheasant Run did not want those people coming through their project and it was decided that that connection would not be made. There was still one access to Pheasant Run one block north of Old Cheney Road and when Jim

Hille wanted to do his new home, he asked that that roadway be turned into a cul-de-sac. Again, the opportunity for the connection was lost. In regard to Mr. King's testimony about the connection from Hickory Crest to Old Cheney, staff again asked for that and was successful and that was based on the fact that the city had purchased Outlot A and had guaranteed there would be a connection.

Hill also stated that Robin Court, Rainbow Circle and Rosebud Circle were purchased from Ed Copple and replatted into Parnam Place. The staff had asked for connectors but they were never designed to have connectors to the south. Bartels confirmed that there was no provision for the connectors with the approved final plat.

Schwinn wants to know why this lot was chosen then. Hill explained that it is because at that time the city staff went through and came up with five alternatives for the City Council to consider for getting out of Colonial Hills to the south, none of which were satisfactory to anybody. The Council said they would buy those two lots and directed that to be the location of the access. The road has not been built because there was an agreement that the city would not ask for that street to go through until this area came forth with a subdivision. The city was not trying to force a location of the road, but wants the connection and left it up to the owner to tell the city how he will run the road from Tanglewood down to Old Cheney.

Hopkins wants to know if we're just trading problems. Hill does not believe it should be looked at it as a problem. The solution is that we have to have a continuous and integrated street system for everyone to share. The longer you have to travel on a road, the higher your speed. The people living north of this project have to travel over ½ mile to get out onto a major road. Local streets are supposed to be local streets and the speed limit is 25 mph. You want to try and move the people out of that residential local area so they can get onto a major street. You don't do that by closing off access.

Hill urged that the city does not want any final plats approved until there is written commitment from Edgewood and Pheasant Run showing the proposed roadway connections. Hunter's concern is that when you see a huge development like this, the guy at the bottom part or end of the development winds up having to solve the problems, e.g. where Edgewood Drive comes back into Rosebud Court. It looks like we've gotten to D-Day and the last part of the development has to pay the price for everything that didn't get done along the way.

Hill suggested that this developer has not been an innocent bystander either. The staff would like for a decision to be arrived at so that everyone knows what that decision is. We have been waiting 10 years for a development to occur on this property; we feel whatever that decision is should be the final decision so that we can all move on to other things. The longer it sits around, the worse it becomes.

Bartels noted that this developer owns 40 acres. There is a clear requirement in the subdivision ordinance for a collector system on roughly one-half mile grid in the city. This is not an unusual requirement. He does not believe we are imposing an unusual condition on this development. Hill clarified that the city is not asking for a collector size street.

In summary, the staff disagrees with the proposed deletion of Condition #1.1.1. The revision to Condition #1.1.2 and #1.1.3 is acceptable; however, the number of dwelling units should be determined at this time. The staff would agree to the maximum number of dwelling units if they do not have a design at this time, and would like to have some indication of the type of development that would occur with some setbacks along the perimeter of those lots.

With regard to Condition #1.1.7, the staff feels strongly that unless the developer has a commitment from those neighbors as to the roadway connections, they are not ready for final plat approval.

With regard to Condition #1.1.12, Bartels had asked that the grading plan correspond with the streets. He would like to have the engineers work together on what that grading plan looks like.

With regard to the amendment to schedule the project on the City Council agenda prior to submitting the revised documents and plans, Hill stated that the staff is opposed. The only way the City Council knows what has been approved is to actually have it in written form and on the plans.

Hill has no objection to changing the street name of Pheasant Run Lane.

As far as the Change of Zone from R-1 to R-2, Hill stated that until the applicant can tell us how many dwelling units they want and the type, the staff believes that the zoning should remain as R-1.

With regard to "new urbanism", Steve Henrichsen of Planning staff applauds the applicant's efforts in including a few elements of "new urbanism". However, Henrichsen believes this development is completely missing one of the cornerstones and that is connectivity—connections between the adjacent neighborhoods. This is extremely important because it disperses the traffic to various points. Otte said this proposal is a quality development and running a street through it would ruin the project. Think about Country Club and Sheridan Blvd., which carry 10 times the traffic that this street will ever carry. There are lists of streets that will have far more traffic than this connection will ever have. One of the sad things is that the amount of traffic has been completely blown out of proportion. This is not a high density development—it is only about 45 residential lots. The accessory units are small in size, meant to allow one or two persons each. With the 88 units, this is still not a high density development on 40 acres. It is unfortunate that it is a very big double standard—it is okay for traffic to go down Elkcrest and Hickory Crest, but

not okay to go down this street. Otte's proposal is that he does not want the connection through his neighborhood and it is fine for that traffic to continue to use Elkcrest and Hickory Crest. The concerns on Rosebud Circle are land use. They are most concerned that the developer will do commercial or apartments if the connection goes through. The Planning Commission and City Council have the ability to not allow commercial uses on this property. We have talked about having a potential for a connection that would come up to Tanglewood Lane. This will not be a fast street. By deleting this connection we decrease pedestrian safety.

Public Works has never said they wouldn't allow a second connection to Old Cheney Road, but there is nothing in front of the Commission now to show a second connection.

Henrichsen is at a loss as to why a connection into a residential area is less acceptable to a connection into a commercial area. The one that is required is the one to the north and that is the only one that this applicant is asking to delete. Pheasant Run should be concerned about through traffic because they have no connection to this area.

Hunter noted that once you get past Hwy 2 and Old Cheney and head out Old Cheney, it is a freeway. Dumping traffic onto Old Cheney is a concern to her. There is a stoplight at the Elkcrest entrance on 56<sup>th</sup>, but is the city prepared to be looking at stop lights because this part on the south side of Old Cheney and out further is hazardous? Henrichsen does not believe a light would be necessary at 62<sup>nd</sup> Street on Old Cheney because of the residential traffic. Bartels noted that there is a light at 56<sup>th</sup> & Elkcrest. The city continues to monitor intersections. If the traffic warrants it there are guidelines for installing signals. However, he would not anticipate a signal from day one, but if it were warranted later, it would be installed. Old Cheney will be designed as a 5-lane arterial and will have a design speed that can safely handle cars.

In response to a question posed by Taylor, Bartels advised that the city told Rob Otte and his design team that they needed an intersection at Old Cheney and it just evolved into being 62<sup>nd</sup> Street.

**4. Mary Ludwig**, who lives on Tanglewood Lane, knows that there are neighbors that are not pleased with her position. She is not only thinking of herself and the people across the street but the development as a whole. The street connection might increase the traffic flow on her street but she thinks it will help the whole neighborhood. This will take away some of the traffic from one densely populated area and spread it around. There are people that live close by that are in support of this street connection. She thinks Black Forest sounds wonderful, but it should not be to the expense of 1400 people. A lot of people will not even want to drive out that way, but the connection needs to be there for that opportunity and for emergency vehicles.

**5. Neal Cross**, 6409 Tanglewood, is opposed to the street connection. It has always been the thought that that empty lot would become a street south to Old Cheney. It has always

been his opinion that this street connection is not needed with the four accesses into Colonial Hills. Without that street, Tanglewood Lane will be quieter.

Hunter hopes that neighbors are listening and that everyone understands that one decision one way will please only 50%--no one is going to come out of this 100% happy.

Response by the Applicant

Otte suggested that a couple of things that staff said are inaccurate and false. Mr. Hill commented that Quin-C had acquired additional property in this area and that is plain false. Quin-C has always owned the same amount of property. Quin-C acquired Charlie Wright's property this year, but before that they did not acquire additional property. When Quin-C first came in 15 years ago to develop Parnam Place, they showed a connection that ran into Parnam Place. And they were told that they could not make that connection because Edgewood might expand to that road. Otte appreciates the comments that have been made, but it is inaccurate to say they have shut off all their accesses by acquiring additional property. Parnam Place is above this development. The streets have been in Colonial Hills for 25 years. We have told people for a long time that Colonial Hills has been developed for 25 years. There are a lot of people that don't believe that was ever going to be a street.

Otte also suggested that "new urbanism" does not say split this like Sheridan Blvd. This developer agrees to connectivity but this is a site that has some environmental concerns and some landlock concerns in terms of its other uses.

Otte understands that the city design standards require that where there are more people that we have more than one access. We could come over to Edgewood, but Edgewood may not allow us; the Pheasant Run people may not let us in; there is a possible connection at Frontier Road.

Otte suggests that this plan does have sidewalks. The Pheasant Run side has sidewalks on one side, with the bike path behind the other lots. So this is fully developed for hikers/bikers/walkers. They are only requesting a waiver of sidewalks on one side of the street.

We have been seeing traffic on Old Cheney Road for a long time. We've seen Pheasant Run. We know that Old Cheney is pretty bad. If you want to put a Sheridan Blvd. from Colonial Hills down to Old Cheney, you can imagine how much traffic that is going to generate. If traffic is pulled down into this development, does it change the character? Clearly the answer is yes. We have to enhance traffic flow by providing for an access up to Edgewood.

Otte agrees that there is no perfect solution. This developer is trying to show a good and credible solution. This represents good planning. We don't need a connector street running through here.

Schwinn moved to defer for two weeks, seconded by Taylor. Schwinn believes that the Commission has received too much information in this hearing to make a decision at this time. Hopkins agreed. She wants to review the information more thoroughly.

The Commission requests no repeated testimony in two weeks, but will welcome additional information. The Commission will appreciate additional negotiations between the parties in the next two weeks.

Motion to continue public hearing and administrative action on October 20, 1999, carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99010;**  
**SPECIAL PERMIT NO. 1790, LONG VIEW ESTATE COMMUNITY UNIT PLAN;**  
**and**  
**PRELIMINARY PLAT NO. 99022, LONG VIEW ESTATES,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S.W. 40TH STREET AND WEST VAN DORN STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 1999

Members present: Newman, Hunter, Schwinn, Taylor and Hopkins; Bayer, Steward, Krieser and Duvall absent.

Planning staff recommendation: Conditional approval, as revised on October 6, 1999.

Mike DeKalb of Planning staff submitted a revised report to correct some minor errors.

He also added a condition on the special permit as suggested by the Health Department to abandon the windmill well.

Proponents

1. **Lyle Loth**, ESP Engineers, testified in support. He stated that he is wearing the first hat as the engineer and the second hat as a partner with Hub Hall and Dave Hall on this project. This project has similarities to the Cardwell Woods and Meadow View Projects. It does have some unique features, including the conservation easement on four outlots over approximately 82 acres, to conserve native prairie, wetlands, woodlands and some pond areas. They do plan to pave all interior streets and are also being asked to pave 1/4 mi. of S.W. 40<sup>th</sup> Street. They will be putting in a community sewer system, utilizing a collection system. Loth is hopeful that this will turn out to be an amenity rather than a

problem area for this development. This developer has been in communication with the Frampton and Alice Dittman families who have all expressed great pleasure in this project and they are very excited about it.

With regard to abandoning the windmill, Loth suggested that the windmill is located on an outlot that will be a part of the common ground, right above the pond. If it is a functional windmill it might not be a bad idea to use it to supplement the pond water. Loth suggested that Condition #1.1.10 be worded such that they be required to add a note that the windmill will be properly abandoned or limited to non-potable uses.

There was no testimony in opposition.

Mike DeKalb stated that the staff would agree with Mr. Loth's amendment to Condition #1.1.10.

Public hearing was closed.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99010**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to find the conservation easement to be in conformance with the Comprehensive Plan, seconded by Taylor and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**SPECIAL PERMIT NO. 1790,**  
**LONG VIEW ESTATES COMMUNITY UNIT PLAN**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, with amendment to Condition #1.1.10 as discussed, seconded by Taylor.

Schwinn is impressed with the way they have gone about laying this out and creating the conservation easements. This constitutes a lot of the Smart Growth initiatives in creating a situation like this and the developer should be commended.

Motion carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**PRELIMINARY PLAT NO. 99022,**  
**LONG VIEW ESTATES**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**                      October 6, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Newman and carried 5-0: Newman, Schwinn, Taylor, Hunter and Hopkins voting 'yes'; Bayer, Steward, Krieser and Duvall absent.

**OTHER BUSINESS:**

Chair Hopkins announced that due to the lack of attendance, the election of Chair and Vice-Chair will be held over for two weeks until October 20, 1999.

There being no further business, the meeting was adjourned at 5:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 20, 1999.